

PARTIES

2. Plaintiff Getty Images is a New York corporation with its principal place of business in New York, New York.

3. Defendant Gestalt Ventures is a Texas corporation with its principal place of business in San Antonio, Texas. Gestalt Ventures has registered the assumed name of Elemental Consulting with the Bexar County Clerk in San Antonio, Texas. Elemental Consulting is the registered owner of the website www.goelemental.com. Upon information and belief, Elemental Consulting directly participated in the wrongful conduct alleged in this Complaint, and/or had the right and ability to supervise, direct and control the wrongful conduct of others, and derived a direct financial benefit from that wrongful conduct.

JURISDICTION AND VENUE

4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), as this action involves claims brought under federal law, the Copyright Act, 17 U.S.C. § 101, *et seq.*

5. Defendant Elemental Consulting is subject to personal jurisdiction in this Court because it is a resident of the State of Texas and/or purposefully aimed its activities at the State of Texas from which the claims asserted in this Complaint arise. Additionally, Elemental Consulting displays its website, www.goelemental.com, throughout the State of Texas, purposefully directs that website to residents of the State of Texas, and otherwise is engaged in business in the State of Texas.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1400(a), as Elemental Consulting or its agent resides or may be found in this District. Upon information and belief, venue is also proper in this District pursuant to 28 U.S.C. § 1391(b), as a substantial part of the events or omissions giving rise to the claims asserted in this Complaint occurred in the District.

FACTUAL BACKGROUND

7. Getty Images is one of the world's leading digital content providers, supplying imagery, video and music to business customers. Getty Images licenses content for a wide variety of uses, including use online, in websites, books, newspapers, magazines, television and film productions; advertisements, marketing materials, products and packaging. Getty Images generates revenue from licensing the rights to use its content, including imagery, and from providing related services.

8. Getty Images was the first company to license imagery via the Internet and today delivers virtually all of its visual content digitally. Visitors to Getty Images' website, www.gettyimages.com, can search through and view millions of images and obtain licenses for those images online.

9. Getty Images owns some of the content that it licenses. Getty Images also acts as the distributor for more than 150,000 content suppliers – contributors, such as individual photographers, illustrators, filmmakers, media organizations, other stock photo agencies, and independent musicians. Content suppliers typically prefer to retain ownership of their work and, as a result, copyright to content remains with the artists in most cases, while Getty Images obtains by contract the right to market, distribute, and license that content to third parties. Some of this content is licensed to Getty Images on an exclusive basis.

10. In or about July 2011, Getty Images identified a photographic image, with the catalog description “200187319-004 (RM) Three leafcutter ants (*atta cephalotes*) carrying leaves, close-up,” that had been reproduced, displayed, and distributed by Defendant Elemental Consulting on its website, www.goelemental.com, without authorization. The identified image was at that time and is still today exclusively licensed to Getty Images.

11. The photographic image described in the preceding paragraph is the subject of copyright Certificate of Registration VA 1-876-258 (dated September 23, 2013). Attached as Exhibit A is a true and correct copy of the Certificate of Registration.

12. Getty Images brings this action to recover damages for the harm it has sustained, and for such further relief as sought herein.

COUNT I

(Copyright Infringement, 17 U.S.C. § 501, et seq.)

13. Getty Images repeats and incorporates by this reference each and every allegation set forth in paragraphs 1 through 12, inclusive.

14. Getty Images is the exclusive licensee of the photographic image that is the subject of this action. Among the rights granted to Getty Images is the exclusive right to market and sublicense the right to copy, reproduce and display the image. Additionally, Getty Images is granted the exclusive right to make and control claims related to infringements of copyrights in the image. A copy of the copyright Certificate of Registration VA 1-876-258 issued by the United States Copyright Office, for the subject image, is attached as Exhibit A.

15. Defendant Elemental Consulting has reproduced, displayed, distributed and made other infringing uses of the protected image, without authorization by Getty Images, including Defendant’s infringing use of that image on www.goelemental.com.

16. As a result of its conduct, Elemental Consulting is liable to Getty Images for copyright infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Getty Images respectfully requests that this Court grant the following relief:

a. That the Court enter a judgment against Defendant finding that it has infringed Getty Images' rights in the photographic image listed in Exhibit A;

b. That the Court enter an order, pursuant to 17 U.S.C. § 504(b), declaring that Defendant holds in trust, as constructive trustees for the benefit of Getty Images, all profits received by Defendant from its reproduction, distribution, display or other infringing uses of the photographic image listed in Exhibit A, and requiring Defendant to provide Getty Images a full and complete accounting of all profits received by Defendant;

c. That the Court order Defendant to pay damages to Getty Images, in an amount to be proved at trial, including an award of actual damages suffered by Getty Images as a result of the infringements and all profits of Defendant that are attributable to those infringements, pursuant to 17 U.S.C. § 504(b);

d. That the Court order prejudgment interest on the amount of any award to Getty Images; and

e. That the Court grant to Getty Images such other and additional relief as is just and proper.

Dated: January 17, 2014.

Respectfully submitted,

DAVIS, CEDILLO & MENDOZA, INC.

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ATTORNEYS FOR PLAINTIFF

GETTY IMAGES (US), INC.

EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VA 1-876-258

Effective date of
registration:
September 23, 2013

Title

Title of Work: Three leafcutter ants (*atta cephalotes*) carrying leaves, close-up (200187319-004)

Completion/Publication

Year of Completion: 2005

Date of 1st Publication: September 3, 2005

Nation of 1st Publication: United States

Author

■ Author: Tim Flach Photography Ltd.

Author Created: photograph(s)

Work made for hire: Yes

Citizen of: United Kingdom

Copyright claimant

Copyright Claimant: Tim Flach Photography Ltd.

58 Great Eastern Street, London, EC2A 3QR, United Kingdom

Transfer Statement: By written agreement

Rights and Permissions

Organization Name: GETTY IMAGES (US), INC.

Email: copyright@gettyimages.com

Telephone: 206-925-5000

Address: 605 5th Avenue S, Suite 400

Seattle, WA 98104

Certification

Name: Cynthia Sharp, Getty Images

Date: September 23, 2013